IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.: 006559.00013
Wennerstrom, et al.	
Serial No.: 09/963,598	Group Art Unit: 2623
Filed: September 27, 2001	Examiner: Bui, Kieu Oanh T.
For: Storage Of Audio/Visual Program Data With Associated Promotional Material	Confirmation No.: 9391

APPEAL BRIEF

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Sir:

This is an Appeal Brief filed in support of Appellants' July 9, 2007, Notice of Appeal. Appeal is taken from the Final Office Action mailed January 9, 2007 (hereafter, "Final Office Action").

Please charge any fees to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is Nokia Corporation of Espoo, Finland.

RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS
37 C.F.R. § 41.37(c)(1)(iii)

Claims 1, 3-9, 11-21, 23-26, and 28-33 are pending and rejected. Claims 2, 10, 22, and 27 have been previously canceled. Appellants hereby appeal the rejection of claims 1, 3-9, 11-21, 23-26, and 28-33.

STATUS OF AMENDMENTS
37 C.F.R. § 41.37(c)(1)(iv)

The most recent amendment to the claims, filed April 9, 2007, was not entered for purposes of (this) appeal. See the Advisory Action of mailing date May 31, 2007 (hereafter, "Advisory Action") at page 1 (#7 For purposes of appeal, the proposed amendment(s): a) will not be entered). The next most recent amendment was filed October 30, 2006. Appellants note that the Final Office Action indicates that it is responsive to the Amendment filed October 30, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER
37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments; all references to the specification and drawings are illustrative unless otherwise explicitly stated.

Improvements in technology, such as an increase in capacity of hard discs suitable for recording digital satellite and cable transmissions, will increase to hundreds of hours the amount of programming that may be stored on such hard discs. Specification, p. 1, lines 10-29. However, where a large number of programs have been stored, such as a full day's output from a television channel, it is more difficult to raise a viewer's interest in programs. *Id.*, p. 2, lines 1-3. By providing easy access to promotional material such as previews, trailers and text information, the invention allows a user to make informed viewing decisions when faced with a large number of stored programs. *Id.*, p. 6, lines 31-33.

The invention of independent claim 1 is directed to a client multimedia apparatus. *Id.*, p. 2, line 13. The apparatus comprises a receiver to receive at approximately the same time primary

program data and associated secondary program data from a communication channel. *Id.*, p. 2, lines 14-16. The apparatus further comprises a data storage medium (*Id.*, Figure 1, element 6; Figure 3, element 6) and a data processor (*Id.*, Figure 1, element 7; Figure 3, element 8) operable to record the primary program data and the associated secondary program data on the data storage medium as separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The data processor is further operable to, subsequent to the storage of the primary program data and its associated secondary program data being complete, provide a user interface for selection of the program data files and retrieve a secondary program data file selected by a viewer for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 9 is directed to a client multimedia apparatus. *Id.*, p. 2, line 13. The apparatus comprises a receiver to receive primary program data from a communication channel. *Id.*, p. 2, lines 14-16. The apparatus further comprises a data storage medium and a data processor operable to record primary program data on the storage medium. *Id.*, p. 2, lines 14-18; Figures 1-2, element 6 ("hard disk"). The data processor is further operable to run a software agent arranged to identify and copy portions of the primary program that have been earmarked and store a copy of said earmarked data as an associated secondary program data file. *Id.*, p. 2, lines 25-32. The primary program data and the secondary program data are stored in separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The processor is further operable to, subsequent to both the primary data and its associated secondary data having been stored on the storage medium, provide a user interface for selection of the stored program data files and retrieve a secondary program file selected by a viewer for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 16 is directed to a method for providing access to program data held in a storage medium within a client multimedia apparatus. *Id.*, p. 2, line 13. The method comprises receiving at said apparatus at approximately the same time (*Id.*, p. 2, lines 22-23) primary program data and associated secondary program data from a communication channel. *Id.*, p. 2, lines 14-16. The method further comprises storing said primary program data and the associated secondary program data in separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The method further comprises a step of, subsequent to both the primary program data

and its associated secondary program data being stored, providing a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from said user interface, retrieving said secondary program data for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 21 is directed to a method of providing access to program data held in a storage medium within a client multimedia apparatus. *Id.*, p. 2, lines 13-20. The method comprises receiving at said apparatus primary program data from a communication channel. *Id.*, p. 2, lines 14-16. The method further comprises storing the primary program data on a data storage medium. *Id.*, p. 2, lines 16-18; Figures 1-2, element 6 ("hard disk"). The method further comprises running a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data. *Id.*, p. 2, lines 25-32. The primary program data and the secondary program data are stored in separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The method further comprises the step of, subsequent to both the primary and its associated secondary program data having been stored on the data storage medium, selectively retrieving the secondary program data for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 28 is directed to a computer-readable medium comprising a computer program for a client multimedia apparatus. *Id.*, p. 2, line 13. The computer program comprises instructions that when executed by a processor cause the processor to receive at said apparatus at approximately the same time primary program data and associated secondary program data from a communication channel. *Id.*, p. 2, lines 14-16. The computer program further comprises instructions that when executed by a processor cause the processor to store (*Id.*, Figure 1, element 6; Figure 3, element 6) said primary program data and the associated secondary program data as separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The computer program further comprises instructions that when executed by a processor cause the processor, subsequent to both the primary program data and its associated secondary program data being stored, to provide a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from

said user interface, retrieve said secondary program data for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 29 is directed to a computer-readable medium comprising a computer program to be run on a client multimedia apparatus. *Id.*, p. 2, lines 13-20. The computer program comprises instructions that when executed by a processor cause the processor to receive at said apparatus primary program from a communication channel. *Id.*, p. 2, lines 14-16. The computer program further comprises instructions that when executed by a processor cause the processor to store the primary program data on a data storage medium. *Id.*, p. 2, lines 14-18; Figures 1-2, element 6 ("hard disk"). The computer program further comprises instructions that, when executed by a processor, cause the processor to run a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data. *Id.*, p. 2, lines 25-32. The primary program data and the secondary program data are stored in separate files. *Id.*, p. 2, lines 16-18; p. 3, lines 6-9; Figure 5. The computer program further comprises instructions that when executed by a processor cause the processor to, subsequent to both the primary and its associated secondary program data having been stored on the data storage medium, selectively retrieve the secondary program data for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7.

The invention of independent claim 32 is directed to a client multimedia apparatus. *Id.*, p. 2, line 13. The client multimedia apparatus comprises a receiver to receive at approximately the same time primary program data and associated secondary program data from a communication channel. *Id.*, p. 2, lines 14-16. The client multimedia apparatus further comprises a data storage medium (*Id.*, Figure 1, element 6; Figure 3, element 6) and a data processor (*Id.*, Figure 1, element 7; Figure 3, element 8) operable to record the primary program data and the associated secondary program data on the data storage medium. *Id.*, p. 2, lines 16-18; Figures 1-2, element 6 ("hard disk"). The data processor is further operable to, subsequent to the storage of the primary program data and its associated secondary program data being complete, provide a user interface for selection of the program data files and retrieve a secondary program data file selected by a viewer for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1;

Figure 7. The secondary programming data is a trailer for the primary programming data. *Id.*, p. 3, lines 6-9.

The invention of independent claim 33 is directed to a client multimedia apparatus. *Id.*, p. 2, line 13. The client multimedia apparatus comprises a receiver to receive primary program data from a communication channel. *Id.*, p. 2, lines 14-16. The client multimedia apparatus further comprises a data storage medium (*Id.*, Figure 1, element 6; Figure 3, element 6), and a data processor (*Id.*, Figure 1, element 7; Figure 3, element 8) operable to record primary program data on the storage medium. *Id.*, p. 2, lines 14-18. The data processor is further operable to run a software agent arranged to identify and copy portions of the primary program that have been earmarked and store a copy of said earmarked data as an associated secondary program data file. *Id.*, p. 2, lines 16-18; p. 2, lines 25-32; p. 3, lines 6-9; Figure 5. The processor is further operable to, subsequent to both the primary data and its associated secondary data having been stored on the storage medium, provide a user interface for selection of the stored program data files and retrieve a secondary program file selected by a viewer for display. *Id.*, p. 6, lines 9-23; Figure 6, element S6.1; Figure 7. The secondary programming data provides a trailer for the primary programming data. *Id.*, p. 3, lines 6-9.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

- Claims 1, 3-9, 11-21, 23-26, and 28-33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,408,128 to Abecassis et al. (hereafter, Abecassis).

ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

A. **Rejection of Claims 1, 3-9, 11-21, 23-26, and 28-33 over Abecassis**

1. Independent Claim 1 and Dependent Claims 3, 7, and 8; Independent Claim 16 and Dependent Claims 17 and 18; Independent Claim 28

Independent claim 1 recites, among other features, "a client multimedia apparatus comprising a receiver to receive at approximately the same time primary program data and associated secondary program data from a communication channel, a data storage medium and a data processor operable to record the primary program data and the associated secondary program data on the data storage medium as separate files." The Final Office Action at page 3 alleges that the recited features, as they relate to the recordation of the primary program data and the associated secondary program data on a data storage medium as separate files, is disclosed by Abecassis at FIG. 12 and col. 47, line 60 – col. 48, line 8, in addition to col. 52, lines 29-48. However, neither the cited portions of Abecassis nor any other portion of Abecassis, discloses storing the primary program data and the secondary program data "in separate files," wherein the primary program data and the secondary program data are received at approximately the same time, as recited in claim 1. Abecassis at col. 47, line 60 – col. 48, line 8 and FIG. 12 merely demonstrates that when, during a playing of a video 1200, a Multimedia Player's processing software receives a request to replay a part of a video 1201, a replay function is activated causing the Multimedia Player's processing to store 1202 the time, frame position, or some other indicator of the place, location, or position ("request position") of the video in which the replay request was received in a memory means. Thus, Abecassis at col. 47, line 60 – col. 48, line 8 fails to disclose the recited features, because the storage of the time, frame position or other indicator takes place in response to having already received/viewed the video to which the replay request pertains to. In fact, the description on col. 50, lines 1-63, makes clear that Abecassis' broadcast programming data is stored in one running file, and "supplementary information" is stored and earmarked within the same file.

Contrary to the assertion of the Final Office Action, Abecassis at col. 52, lines 29-48 fails to disclose the recited features as well. Abecassis at col. 52, lines 29-48 merely demonstrates that the supplementary information may be provided by a source other than the source of the video, with an example provided wherein the supplementary information provided by a remote source may be utilized with a plurality of different video segments of a DVD video and/or a plurality of videos. Nowhere in the cited passage does Abecassis disclose storing the primary program data and the supplementary information (e.g., the alleged secondary program

data) "in separate files." Appellants contend that the Office has instead impermissibly applied hindsight, having read the Appellants' specification into Abecassis to arrive at the conclusion that Abecassis discloses the recited features. For at least the foregoing reasons, claim 1 is not anticipated by Abecassis.

Not only does Abecassis not imply or suggest storing the primary program data and secondary program data "in separate files," it also appears to be incapable of a combination or modification that would support this feature. According to the Final Office Action's characterization of Abecassis, the "secondary programming data" is only secondary because it has not been included in the video sequence to be played, and the determination whether or not to include a video segment in the sequence to be played is dependent on settings and made at the time the sequence is played. In other words, while downloading the data and storing it in the running file, Abecassis has no way of knowing which data will be the secondary data and which data will be the primary programming data. Thus, because no apparent combination or modification involving Abecassis is capable of recording "the primary program data and the associated secondary program data on the data storage medium as separate files," claim 1 is allowable over Abecassis for this additional reason.

Additionally, Appellants note that the "user interface" of claim 1 provides very different functionality from any user interface disclosed in Abecassis. Specifically, Abecassis describes functionality for selecting and retrieving supplementary program data based on system settings. Appellants submit that one skilled in the art would not consider Abecassis' automatic retrieval of supplementary information, such as subtitles and other complementary information, based on system settings to disclose providing a user interface for selection of the program data files and retrieving a secondary program data file selected by a viewer for display, as recited in claim 1.

For at least the foregoing reasons, Appellants submit that claim 1 is allowable over Abecassis.

Claims 3, 7, and 8 depend from claim 1, and are thus allowable for at least the same reasons as claim 1.

Independent claim 16 is directed to a method of providing access to program data held in a storage medium within a client multimedia apparatus. Independent claim 16 recites, among

other features, "receiving at said apparatus at approximately the same time primary program data and associated secondary program data from a communication channel, storing said primary program data and the associated secondary program data in separate file." For substantially the same reasons discussed above with respect to claim 1, Abecassis fails to disclose the above noted features as recited in claim 16. Claim 16 is patentably distinguishable over Abecassis for at least these same reasons.

Additionally, independent claim 16 recites "subsequent to both the primary program data and its associated secondary program data being stored, providing a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from said user interface, retrieving said secondary program data for display." As discussed above with respect to claim 1, the user interface disclosed in Abecassis provides for functionality that is different from the functionality recited and claimed in claim 1. For substantially the same reasons, Abecassis fails to disclose the user interface recited in claim 16. Claim 16 is allowable for at least these additional reasons.

Dependent claims 17 and 18, which depend from claim 16, are allowable for at least the same reasons as claim 16.

Independent claim 28 is directed to a computer-readable medium comprising a computer program for a client multimedia apparatus. The computer program further comprises instructions suitable for execution on a processor. Independent claim 28 recites that when the instructions are executed on the processor, the execution causes the processor to "receive at said apparatus at approximately the same time primary program data and associated secondary program data from a communication channel, store said primary program data and the associated secondary program data as separate files." For substantially the same reasons discussed above with respect to claim 1, Abecassis fails to disclose the above noted features as recited in claim 28. Claim 28 is allowable for at least this reason.

Additionally, independent claim 28 recites, "subsequent to both the primary program data and its associated secondary program data being stored, provide a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from said user interface, retrieve said secondary program data

for display." For substantially the same reasons discussed above with respect to claim 1, Abecassis fails to disclose the above noted features as recited in claim 28. More specifically, the user interface in Abecassis is of a different nature, and provides for different functionality compared to the user interface recited in claim 28. Claim 28 is allowable for at least this additional reason.

2. *Independent Claim 9 and Dependent Claims 14 and 15; Independent Claim 21 and Dependent Claim 24; Independent Claim 29*

Independent claim 9 is directed to a client multimedia apparatus comprising a receiver to receive primary program data from a communication channel. Independent claim 9 recites, among other features, "a data storage medium, a data processor operable to record primary program data on the storage medium, run a software agent arranged to identify and copy portions of the primary program that have been earmarked and store a copy of said earmarked data as an associated secondary program data file, wherein the primary program data and the secondary program data are stored in separate files." Abecassis fails to teach or suggest the recited features. More specifically, Abecassis fails to teach or suggest running a software agent arranged to identify and copy portions of a primary program that has been earmarked and storing a copy of the earmarked data as an associated secondary program data file. Instead, Abecassis at col. 47, line 60 – col. 48, line 8 and FIG. 12 merely demonstrates that when, during a playing of a video 1200, a Multimedia Player's processing software receives a request to replay a part of a video 1201, a replay function is activated causing the Multimedia Player's processing to store 1202 the time, frame position, or some other indicator of the place, location, or position ("request position") of the video in which the replay request was received in a memory means. Thus, Abecassis at col. 47, line 60 – col. 48, line 8 fails to disclose the recited features, because the storage of the time, frame position or other indicator takes place in response to having already viewed the video to which the replay request pertains to. Appellants submit that one of ordinary skill in the art would appreciate the benefits of running a software agent as recited in claim 9, because the running of such a software agent would not require one to view a program in order to mark the time, frame position, or some other indicator of the place, location or position of the video as necessitated by Abecassis. Claim 9 is allowable for at least the foregoing reasons.

Additionally, as indicated above, claim 9 recites that the software agent stores a copy of the earmarked data as an associated secondary program data file, wherein the primary program data and the secondary program data are stored in separate files. As noted above, Abecassis fails to disclose the software agent recited in claim 9. Furthermore, Abecassis fails to disclose a software agent storing primary program data and secondary program data as separate files. Thus, claim 9 is allowable over Abecassis for at least this additional reason.

Dependent claims 14 and 15, which depend from claim 9, are allowable for at least the same reasons as claim 9.

Independent claim 21 recites, among other features, "a method of providing access to program data held in a storage medium within a client multimedia apparatus comprising receiving at said apparatus primary program data from a communication channel, storing the primary program data on a data storage medium, running a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data, wherein the primary program data and the secondary program data are stored in separate files." For substantially similar reasons as discussed above with respect to claim 9, Abecassis fails to teach or suggest the above noted features as they relate to the method of claim 21. Claim 21 is therefore allowable over Abecassis for at least those same reasons.

Dependent claim 24, which depends from claim 21, is allowable for at least the same reasons as claim 21.

Independent claim 29 recites, among other features, "a computer-readable medium comprising a computer program to be run on a client multimedia apparatus comprising instructions that when executed by a processor causes the processor to receive at said apparatus primary program from a communication channel, store the primary program data on a data storage medium, run a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data, wherein the primary program data and the secondary program data are stored in separate files." For substantially similar reasons as discussed above with respect to claim 9, Abecassis fails to teach or suggest the above noted features as they relate to the computer-

readable medium of claim 29. Claim 29 is therefore allowable over Abecassis for at least those same reasons.

3. *Independent Claim 32*

Independent claim 32 recites a client multimedia apparatus operable to record primary program data and associated secondary program data, and to provide a user interface for selection of the program data files and retrieve a secondary program data file selected by a viewer for display. Additionally, independent claim 32 recites features related to, wherein the secondary programming data provides a trailer for the primary programming data.

Although Abecassis discloses trailers, it does not disclose receiving trailers with the primary program data, as recited in independent claim 32. Rather, in Abecassis, the trailers are only submitted with a list of the primary program data. For example, the following portion of Abecassis describes how a user can transmit a request for a video having a particular content, ending, story line, etc.

> The video provider will analyze the user request, and search the videobase for a video matching the user's requirements. If the video is found, then video information, and billing, if any, are transmitted to the user for approval and subsequent video transmission to the user. The video information transmitted to the viewer may include, for example, a list of the videos that are responsive to the viewer's content preferences and subject matter and/or programming preferences, as well as detailed descriptions including the amount, percentages, times, and other quantitative and qualitative information regarding the content of each of a plurality of content categories. The information provided the viewer may also include, for example, the theatrical trailers, as well as linkages to web sites/pages that may provide additional information.

Abecassis, Col. 41, lines 10-22. Therefore, in Abecassis, the trailers are only submitted with a list of the primary program data. Thus, Abecassis does not disclose retrieving trailers associated with the primary program data, as recited in independent claim 32.

In other words, independent claim 32 recites that the primary and the secondary program data are received together. However, this would not be the case if the trailers are submitted first, with a results list, and the primary program data is not transmitted until the user has approved the list based on the trailers, as disclosed by Abecassis.

Nor would there be any motivation to modify Abecassis to transfer the trailers with the primary program data. In Abecassis, the trailers are sent to allow a user to decide whether he wants to receive and pay for the primary program data. In this situation, it would not make sense to send the primary program data at the same time as the trailer as required by claim 32.

Furthermore, the Advisory Action at page 2 refers to Abecassis at col. 26, lines 50-59 and Fig. 7G as allegedly demonstrating the features of receiving trailers with the primary program data. Appellants respectfully disagree with such an assertion, and counter that it is through the application of impermissible hindsight that the Office has arrived at such a conclusion. Abecassis fails to disclose the promotional materials shown in Fig. 7G having been stored with their associated films prior to them being offered to a user of a multimedia player. Reading Abecassis as a whole, the interface shown in Fig. 7G is more like a conventional video-on-demand user interface, by which promotional clips/footage can be viewed before a film is purchased. Thus, the referenced passages from Abecassis fail to teach or suggest the promotional video (e.g., secondary program data) having been downloaded and stored in memory at approximately the same time as the film (e.g., primary program data) as required by claim 32.

Accordingly, for at least the reasons stated above, Appellants submit that independent claim 32 is allowable.

4. *Independent Claim 33*

Independent claim 33 recites a client multimedia apparatus operable to receive primary program data, to run a software agent arranged to identify and copy earmarked portions of the primary program data, and to store a copy of said earmarked data as an associated secondary program data file. As discussed above with respect to claim 9, Abecassis fails to disclose the recited features, because the storage of the time, frame position or other indicator in Abecassis takes place in response to having already viewed the video to which a replay request pertains to. Abecassis is devoid of a disclosure related to the software agent recited in claim 33.

Additionally, independent claim 33 recites features related to, wherein the secondary programming data provides a trailer for the primary programming data. Although Abecassis discloses trailers, it does not disclose copying the trailers from earmarked portions of the

received primary program data, as recited in claim 33. As discussed above with respect to claim 32, in Abecassis, the trailers are only submitted with <u>a list</u> of the primary program data. See Abecassis, col. 41, lines 10-22. Therefore, in Abecassis, the trailers are only submitted with <u>a list</u> of the primary program data. Thus, Abecassis does not disclose copying the trailers from earmarked portions of the received primary program data, as recited in claim 33. The discussion above with respect to claim 32, as it relates to the lack of motivation to modify Abecassis to transfer the trailers with the primary program data is applicable with respect to the above noted features as recited in claim 33.

Additionally, regarding claim 33, the disclosure of the earmarked portions in Abecassis (e.g. columns 36 and 37), is separate from the disclosure of the secondary program data including a trailer. There would be no motivation for the ordinary skilled person to combine these disclosures and, even if he did, it would not lead to the present invention as claimed, because Abecassis does not disclose copying the earmarked portions and storing a copy of the earmarked portions as an associated secondary data that provides a trailer for the primary program data, as required by claim 33.

As noted above in the discussion of claim 32 (and the Advisory Action), Abecassis at col. 26, lines 50-59 and Fig. 7G fails to teach or suggest the promotional materials shown in Fig. 7G having been stored with their associated films prior to them being offered to a user of a multimedia player. Thus, the cited passage of Abecassis also fails to teach or suggest the promotional video having been assembled from earmarked portions of a film (e.g., primary program data) already stored in memory as required by claim 33. Claim 33 is distinguishable from Abecassis for at least these additional reasons.

Accordingly, for at least the reasons stated above, Appellants submit that independent claim 33 is allowable.

5. *Dependent Claims 4 and 19*

Dependent claim 4, in view of claim 1 from which it depends, recites "where the primary program data and secondary program data are in the form of MPEG-2 files." The Final Office Action at page 3 relies on Abecassis at col. 8, lines 34-45 to allegedly demonstrate the recited features. Appellants respectfully disagree with such an assertion, and submit that Abecassis fails

to disclose the recited features. Abecassis at col. 8, lines 34-45 merely demonstrates that an MPEG 2 video compression method may be implemented with respect to the video therein, however, Abecassis fails to disclose the primary program data and secondary program data are in the form of MPEG-2 files. Instead, Abecassis at col. 47, line 60 – col. 48, line 8 and FIG. 12 merely demonstrates that when, during a playing of a video 1200, a Multimedia Player's processing software receives a request to replay a part of a video 1201, a replay function is activated causing the Multimedia Player's processing to store 1202 the time, frame position, or some other indicator of the place, location, or position ("request position") of the video in which the replay request was received in a memory means. Thus, Abecassis fails to disclose that the secondary program data is stored in the form of an MPEG-2 file; instead, in Abecassis, the alleged secondary program data is merely stored as an indicator of an appropriate place in the (primary) video. Appellants submit that the Office has impermissibly applied hindsight to arrive at the conclusion that the secondary program data in Abecassis is stored in the form of an MPEG-2 file, formulating this conclusion having read Appellants' specification. Claim 4 is allowable over Abecassis for at least the above noted reasons.

Dependent claim 19, in view of claim 16 from which it depends, recites "where the primary program data and secondary program data are in the form of MPEG-2 files." For substantially the same reasons discussed above with respect to claim 4, Abecassis fails to disclose the above noted features as recited in claim 16. Claim 16 is allowable for at least these reasons.

6. *Dependent Claims 12 and 25*

Dependent claim 12, in view of claim 9 from which it depends, recites "wherein the primary program data and secondary program data are in the form of MPEG-2 files." As noted above with respect to claim 4, Abecassis fails to disclose wherein the secondary program data is in the form of an MPEG-2 file. Thus, Abecassis fails to disclose the above noted features as recited in claim 12. Claim 12 is allowable for at least these reasons.

Dependent claim 25, in view of claim 21 from which it depends, recites "where the primary program data and secondary program data are in the form of MPEG-2 files." For substantially similar reasons as discussed above with respect to claim 12, Abecassis fails to

disclose the noted features as recited in claim 25. Claim 25 is allowable for at least these same reasons.

7. *Dependent Claims 5 and 20*

Dependent claim 5, in view of claim 1 from which it depends, recites "where the secondary program data is of a lower resolution than that of the primary program data." The Final Office Action at page 4 states that this feature is disclosed in Abecassis by FIGS. 17F and 17G, and at col. 62, lines 3-17. However, the cited portion of Abecassis only discloses selecting a target for magnification within an image and using zooming capabilities enhanced by video compression technologies, thereby increasing resolution independence and enabling higher resolution for high quality zooms. In other words, Abecassis simply describes a technique of zooming for video content windows to change the resolution on the screen. Neither the cited portion of Abecassis, nor any other portion that Appellants have identified, discloses or suggests that the primary and the secondary programs received and recorded are of different resolutions. Therefore, claim 5 is allowable over Abecassis for at least this additional reason.

Dependent claim 20, in view of claim 16 from which it depends, recites "where the secondary program data is of a lower resolution than that of the primary program data." This feature is similar to the feature noted above with respect to claim 5. The above noted features as recited in claim 20 are distinguishable over Abecassis for substantially the same reasons as discussed above with respect to claim 5.

8. *Dependent Claim 13 and 26*

Dependent claim 13, in view of claim 9 from which it depends, recites "wherein the secondary program data is of a lower resolution than that of the primary program data." As noted above in the discussion of claim 5, Abecassis fails to teach or suggest wherein the secondary program data is of a lower resolution than that of the primary program data. Claim 13 recites similar features, and is therefore allowable over Abecassis.

Dependent claim 26, in view of claim 21 from which it depends, recites "where the secondary program data is of a lower resolution than that of the primary program data." Appellants note that this feature is similar to the feature discussed above with respect to claim

13. For substantially the same reasons noted above with respect to claim 13, claim 26 is allowable over Abecassis.

9. *Dependent Claims 11 and 23*

Dependent claim 11, in view of claim 9 from which it depends, recites "wherein the software agent is operable to replace at least a portion of audio data in the secondary program data with audio data from tertiary program data received by the receiver from the communication channel." The Final Office Action at page 4 refers to the rejections of claim 1 and 3-8 in formulating a rejection of claim 11. Appellants note that claim 11 recites features that are unique/different from any of those recited in claim 1 and 3-8, to the extent that the Office has failed to substantiate how Abecassis allegedly demonstrates them. Appellants submit that Abecassis is wholly devoid of any disclosure with respect to the features noted above and specifically recited in claim 11, and that claim 11 is therefore allowable over Abecassis.

Dependent claim 23, in view of claim 21 from which it depends, recites "replacing at least a portion of audio data in the secondary program data with audio data from tertiary program data received by the receiver from the communication channel." This feature is similar the features noted above as recited in claim 11. Therefore, Abecassis also fails to disclose the features recited in claim 23 for substantially the same reasons.

10. *Dependent Claim 30*

Dependent claim 30, in view of claim 1 from which it depends, recites "wherein the apparatus further comprises a display to show a list of the recorded secondary programming data to the viewer." The Final Office Action at page 2 (paragraph 4) indicates a rejection of claim 30 in the enumeration of claims, but fails to analogize any particular passage of Abecassis to the features noted above as recited in claim 30. As noted above in the discussion of claim 32, Abecassis at col. 41, lines 10-22 merely demonstrates that trailers (the alleged secondary programming data) are only submitted with a list of primary program data. This fails to teach or suggest features related to the display of a listing of recorded secondary programming data as recited in claim 30. Appellants submit that Abecassis is devoid of any such disclosure, and that claim 30 is allowable for at least these additional reasons.

11. *Dependent Claim 31*

Dependent claim 31, in view of claim 1 from which it depends, recites "wherein the secondary programming data provides a trailer for the primary programming data." As noted above in the discussion of claim 32, the nature of the trailers disclosed in Abecassis with respect to the alleged primary programming data is different from that nature of the relationship between the trailer and the primary programming data recited in claim 31. More specifically, the alleged primary programming data in Abecassis is merely a listing of video(s). The nature of the trailer in Abecassis therefore takes on a much greater role than "secondary programming data". In fact, in Abecassis, the trailer is more readily analogized to the primary programming data, because it is the trailer that motivates a user to subsequently select/order a video from the listing of videos. As such, there is no such secondary programming data to provide a trailer for the primary programming data (e.g., Abecassis does not disclose providing a trailer for another trailer). Thus, claim 31 is allowable over Abecassis for at least the reasons discussed above.

12. *Dependent Claim 6*

The Final Office Action at page 4 asserts that Abecassis at col. 5, lines 40-53 discloses the features of "wherein the processor is operable to selectively allow marking of the primary program data for deletion or prolonged keeping upon user input during display of the secondary program data" as recited in claim 6. Appellants note that the cited passage in Abecassis describes a conventional video-on-demand system. However, conventional video on-demand systems are not known to allow marking of program data for deletion or prolonged keeping upon user input during display of the secondary program data as required by claim 6. Accordingly, Appellants submit that claim 6 is allowable for at least this additional reason.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully submit that the final rejection of claims 1, 3-9, 11-21, 23-26, and 28-33 is improper and should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

1. A client multimedia apparatus comprising a receiver to receive at approximately the same time primary program data and associated secondary program data from a communication channel,

a data storage medium and a data processor operable to record the primary program data and the associated secondary program data on the data storage medium as separate files,

the data processor further being operable to, subsequent to the storage of the primary program data and its associated secondary program data being complete, provide a user interface for selection of the program data files and retrieve a secondary program data file selected by a viewer for display.

2. (Canceled).

3. A multimedia apparatus as in claim 1, wherein the secondary program data comprises promotional material selected from the group comprising forms: audio, video, pictures, text and graphics.

4. A multimedia apparatus as in claim 1, where the primary program data and secondary program data are in the form of MPEG-2 files.

5. A multimedia apparatus as in claim 1, where the secondary program data is of a lower resolution than that of the primary program data.

6. A multimedia apparatus as in claim 1 wherein the processor is operable to selectively allow marking of the primary program data for deletion or prolonged keeping upon user input during display of the secondary program data.

7. A set top box comprising a multimedia apparatus as in claim 1.

8. A multimedia apparatus as in claim 1 further including a display device to display the primary and secondary data retrieved from the storage medium.

9. A client multimedia apparatus comprising a receiver to receive primary program data from a communication channel, a data storage medium, a data processor operable to record primary program data on the storage medium, run a software agent arranged to identify and copy portions of the primary program that have been earmarked and store a copy of said earmarked data as an associated secondary program data file, wherein the primary program data and the secondary program data are stored in separate files, the processor further being operable to, subsequent to both the primary data and its associated secondary data having been stored on the storage medium, provide a user interface for selection of the stored program data files and retrieve a secondary program file selected by a viewer for display.

10. (Canceled).

11. A multimedia apparatus as in claim 9 wherein the software agent is operable to replace at least a portion of audio data in the secondary program data with audio data from tertiary program data received by the receiver from the communication channel.

12. A multimedia apparatus as in claim 9 wherein the primary program data and secondary program data are in the form of MPEG-2 files.

13. A multimedia apparatus as in claim 9 wherein the secondary program data is of a lower resolution than that of the primary program data.

14. A set top box comprising a multimedia apparatus as in claim 9.

15. A multimedia apparatus as in claim 9 further including a display device to display the primary and secondary data retrieved from the storage medium.

16. A method of providing access to program data held in a storage medium within a client multimedia apparatus comprising

receiving at said apparatus at approximately the same time primary program data and associated secondary program data from a communication channel,

storing said primary program data and the associated secondary program data in separate files, and

subsequent to both the primary program data and its associated secondary program data being stored, providing a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from said user interface, retrieving said secondary program data for display.

17. A method as in claim 16 including receiving the secondary program data in parallel with the primary program content.

18. A method as in claim 16 where the secondary program data comprises promotional material in one or more of the following forms: audio, video, pictures, text or graphics.

19. A method as in claim 16 where the primary program data and secondary program data are in the form of MPEG-2 files.

20. A method as in claim 16 where the secondary program data is of a lower resolution than that of the primary program data.

21. A method of providing access to program data held in a storage medium within a client multimedia apparatus comprising receiving at said apparatus primary program data from a

communication channel, storing the primary program data on a data storage medium, running a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data, wherein the primary program data and the secondary program data are stored in separate files, and

subsequent to both the primary and its associated secondary program data having been stored on the data storage medium, selectively retrieving the secondary program data for display.

22. (Canceled).

23. A method as in claim 21 including replacing at least a portion of audio data in the secondary program data with audio data from tertiary program data received by the receiver from the communication channel.

24. A method as in claim 21 where the secondary program data comprises promotional material in one or more of the following forms: audio, video, pictures, text or graphics.

25. A method as in claim 21 where the primary program data and secondary program data are in the form of MPEG-2 files.

26. A method as in claim 21 where the secondary program data is of a lower resolution than that of the primary program data.

27. (Canceled).

28. A computer-readable medium comprising a computer program for a client multimedia apparatus comprising instructions that when executed by a processor causes the processor to

receive at said apparatus at approximately the same time primary program data and associated secondary program data from a communication channel,

store said primary program data and the associated secondary program data as separate files, and

subsequent to both the primary program data and its associated secondary program data being stored, provide a user interface for selection of the stored primary program data file and its associated secondary program data file and in response to a selection by a viewer from said user interface, retrieve said secondary program data for display.

29. A computer-readable medium comprising a computer program to be run on a client multimedia apparatus comprising instructions that when executed by a processor causes the processor to

receive at said apparatus primary program from a communication channel, store the primary program data on a data storage medium, run a software application so as to identify and copy earmarked portions of the stored primary program data and store a copy of the earmarked portions as associated secondary program data, wherein the primary program data and the secondary program data are stored in separate files, and

subsequent to both the primary and its associated secondary program data having been stored on the data storage medium, selectively retrieve the secondary program data for display.

30. A client multimedia apparatus according to claim 1, wherein the receiver and the data processor are configured to receive and record the primary program data and the secondary programming data according to the viewer's instructions and wherein the apparatus further comprises a display to show a list of the recorded secondary programming data to the viewer.

31. A client multimedia apparatus according to claim 1, wherein the secondary programming data provides a trailer for the primary programming data.

32. A client multimedia apparatus comprising a receiver to receive at approximately the same time primary program data and associated secondary program data from a communication channel,

a data storage medium and a data processor operable to record the primary program data and the associated secondary program data on the data storage medium,

the data processor further being operable to, subsequent to the storage of the primary program data and its associated secondary program data being complete, provide a user interface for selection of the program data files and retrieve a secondary program data file selected by a viewer for display, wherein the secondary programming data is a trailer for the primary programming data.

33. A client multimedia apparatus comprising a receiver to receive primary program data from a communication channel, a data storage medium, a data processor operable to record primary program data on the storage medium, run a software agent arranged to identify and copy portions of the primary program that have been earmarked and store a copy of said earmarked data as an associated secondary program data file, the processor further being operable to, subsequent to both the primary data and its associated secondary data having been stored on the storage medium, provide a user interface for selection of the stored program data files and retrieve a secondary program file selected by a viewer for display, wherein the secondary programming data provides a trailer for the primary programming data.

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(1)(x)

NONE.